IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

MFA.No. 73 of 2003()

OPMV.4/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI

APPELLANT: 3RD RESPONDENT

NATIONAL INSURANCE COMPANY LTD.,
REP; BY ITS ASST.ADMINISTRATIVE OFFICER,
KOCHI REGIONAL OFFICE - T.P.CELL,
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: PETR, RESPT 1 & SUPPL.RESPDT 4 & 5 :
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1. PUTHIYAPPARAMBAN HASSAN, S/O.AHAMMED,
AGED ABOUT 45 YEARS, MELANGADI P.O. KONDOTTI,
MALAPPURAM DISTRICT.

2. CHEERANGAN ALIKUTTY, S/O.MOIDEEN,
ANTHIYOORKUNNU AMSOM, VALIYAPARAMBU P.O.
PULIKKAL (VIA), MALAPPURAM DISTRICT.

3. SANTHA, W/O.DAMODARAN,
PRASANTHI NIVAS, MANNUR P.O.
FEROKE, KOZHIKODE DISTRICT.

4. PREJITHA, D/O.DAMODARAN, -DO-

R2 BY ADV. SRI.BABU S. NAIR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

M.F.A.NO. 73 OF 2003 B

Dated this the 19th day of December,2006

JUDGMENT

The third respondent in O.P.(MV) No.4 of 1997, on the file of the Motor Accidents Claims Tribunal, Manjeri, challenges the award on the ground that the appellant/third respondent has no liability to pay the compensation, since at the time when the accident occurred, the driver of the vehicle had no valid driving licence.

2. The accident occurred on 9.8.1996. The first respondent Alikutty (second respondent herein) was the driver of the vehicle and Prasanth, the second respondent in the claim petition was the owner. The vehicle was insured with the appellant insurance company. The owner of the vehicle died during the pendency of the case before the Tribunal and his legal representatives were impleaded as

supplemental respondents 4 and 5. There is no dispute that the driver was having a valid driving licence. But it had expired before the date of accident. The licence was subsequently renewed for the period from 19.8.1996 to 18.8.1999. The insurance company contended that since the driver was not having valid driving licence, the insurance company is not responsible and that the insurer cannot be made liable to pay the compensation amount. The Tribunal rejected that contention on the basis of the decision in (2000 ACJ 507).

3. The principles governing the liability of the insurer have been laid down by the Honourable Supreme Court in **National Insurance Co. Ltd** v. **Swaran Singh & others** (2004 (1) KLT 781 (SC)) and **National Insurance Co. Ltd.** v. **Kusum Rai** (2006 (2) KLT 300 (SC)). In a similar set of circumstances where the Tribunal did not consider the case in the light of the principles laid down in Swaran Singh's

case, the Supreme Court in **National Insurance Corporation Ltd**. v. **Kanti Devi (Mrs.) & others** ((2005) 5 SCC 789) held thus:

> "12. The decision in Swaran Singh case was not before either MACT or the High Court when the respective orders were passed. Therefore, we think it proper to remit the matter to MACT for fresh consideration. It shall permit the parties to lead such further evidence as they may intend to lead. The matter shall be decided keeping in view the principle enunciated by this Court in Swaran Singh case."

4. In the present case also, all the facts have not been considered by the Tribunal, particularly in the light of the principles laid down in the subsequent decisions in Swaran Singh's case and Kusum Rai's case. Therefore, I am inclined to set aside that part of the award holding that the third respondent insurance company is liable to indemnify the insured and remand the case to the Tribunal for considering the said question afresh after affording an opportunity to

produce documents and to adduce evidence. It is made clear that the claimant need not appear before the Tribunal. The finding rendered by the Tribunal that the claimant is entitled to compensation amount is confirmed. The award of Rs.17,250/- as mentioned in paragraph 11 of the judgment is also confirmed. It is submitted that the insurance company has made some deposits. The Tribunal may pass such orders as it may deem fit for disbursing any amount in deposit to the claimant.

In the result, the M.F.A is disposed of with the following directions:

(1) The Tribunal shall permit the insurance company, the owner and the driver to adduce such other evidence as they may wish to adduce for the purpose of deciding the question as to the liability of the insurance company to pay the compensation. (2) The claimant need not appear

before the Tribunal in the proceedings before it. (3) The findings in paragraph 11 and the finding that the claimant is entitled to compensation are confirmed. (4) The finding that the driver was not having a valid driving licence on 9.8.1996 is also confirmed. (5) The finding that the licence was renewed for the period from 19.8.1996 to 18.8.1999 is also confirmed. The Tribunal shall dispose of the case within a period of six months in the light of the observations mentioned above.

The parties shall appear before the Tribunal on 22.1.2007

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

M.F.A.NO. 73 OF 2003

JUDGMENT

19th December,2006